

Case Not Closed: A Connecticut Family in King Leopold's Court

William D. Lay



Jennifer Kalangala's wedding, on August 8, 2009, resembled any other wedding taking place on that brilliant summer day in Connecticut. The entire Kalangala family was gathered together to watch as an obviously proud father escorted his beautiful daughter down the aisle. Not apparent was that just eight years earlier, the Kalangala family members were separated by prison bars, politics, and hundreds of miles of dense tropical forest.

Jennifer and her sister, Jocelyne, were camped in the jungles of the Congo with their father, Col. Francis Kalangala, who was fighting against the government of Joseph Kabila and his Minister of Foreign Affairs, Abdoulaye Yerodia, who is claimed to be the "minister of hate" behind thousands of killings of Rwandan Tutsis.¹ The girls' mother, Evelyne, languished in a Congolese prison where, after narrowly escaping the Rwandan geno-

cide, she was held because of her ethnic identity, caring for their young brother as best she could under harsh conditions.² Today, the Kalangalas' hopes for peace for their country, and justice for the victims of Yerodia's actions, are not yet fulfilled. And they continue to work both for justice, and for the forgiveness and reconciliation that they believe are the only way to resolve the conflict.

To be sure, the author of this article had no inkling of any of this when he sat down in a university classroom in April, 2009, to discuss some of the ways that a nation's criminal courts might impact international disputes.³ I asked my class to read the *Case Concerning the Arrest Warrant of 11 April 2000* (Democratic Republic of the Congo v. Belgium).⁴ I knew that as we discussed the case, my class would be exposed to some of the complexities of international law. I had no idea that we

Biography

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would soon be leaving the rarified realm of legal reasoning, and be hearing firsthand from one student who had experienced the life-and-death struggle that lay beneath the printed words. Francis Kalangala's testimony is a tale of love, of hate, of extreme and daring action, of human dignity in the midst of chaos, and, regrettably, of elusive justice still unfulfilled.

As we began to discuss the case, Mr. Kalangala, who I knew only as one of my most lively and inquisitive students, raised his hand and said, "Professor, I was personally involved in this." We all turned to him. "Well, let me explain," he began.

But before telling Mr. Kalangala's story, a bit of background is required. The case itself tells of the unsuccessful attempt by Belgium to enforce an arrest warrant against Mr. Abdoulaye Yerodia, Foreign Minister of the Democratic Republic of Congo, accused of fomenting massive ethnic violence and murder in the heart of Africa. Perhaps in part to restore the past, Belgium has of late sought to oppose human rights violations in its former colonies in Africa. In 1993, Belgium enacted a statute that criminalized, as a matter of Belgian law, crimes constituting "grave breaches" of the Geneva Conventions of 1949 and crimes against humanity, wherever they may occur.⁵ Such "grave breaches" specifically include, *inter alia*, "wilful killing, torture or inhuman treatment, wilfully causing great suffering or causing serious injury to body or health."⁶ The Belgian statute further sought to extend the jurisdiction of the Belgian criminal courts over anyone com-

mitting such crimes, regardless of their



Helicopter view of Congo River in Bunia, in the occidental province of Democratic Republic of Congo

nationality or that of the victims, where the crimes were committed, or where the perpetrator may be found. This meant that human rights cases from any place involving any party could be brought to Belgian courts for action.⁷

The Democratic Republic of the Congo, known from 1971 to 1997 as Zaire, was once the "property" of Belgian King Leopold II, and was later made a colony of Belgium. Its initial post-independence history was extremely violent and chaotic. Indeed, the second Secretary General of the United Nations, Dag Hammarskjöld, died in a plane crash there in 1961, while attempting to intervene personally to promote peace and national unity. However, with United States support throughout the Cold War period, the rule of Joseph-Désiré Mobutu, later called Mobutu Sese Seko, brought the appearance of stability to Zaire during the 1970s and 1980s. In the 1990s, the façade would disintegrate.

While Belgian legislators debated whether

their courts could exercise universal jurisdiction over crimes against humanity, ethnic violence was growing in Rwanda, another former Belgian colony and neighbor of the much-larger Zaire. By 1990, civil wars had become “a regular part of Rwandan life,”⁸ and Mobutu sent troops of his Zairian Armed Forces (ZAF) to support the regime of Hutu President Juvenal Habyarimana.⁹ At that time, Mr. Kalangala, then a captain, commanded a company of ZAF paratroopers that were sent to Rwanda.

In 1993, the year the Belgian statute was enacted, the Arusha Peace Accords appeared to offer some promise of calm. But tensions and violence continued. On April 6, 1994, Rwandan president Habyarimana died in a plane crash, and this event triggered a genocidal wave of killings that claimed the lives of more than 800,000 Rwandan Tutsis and Tutsi-supporting Hutus.¹⁰ Mr. Kalangala was again mobilized to the Congo-Rwanda border, this time to the border city of Goma.¹¹ He became actively involved in efforts to save the lives of Rwandan Tutsis.¹² It was this activity that led him to make the acquaintance of his future wife.

Mr. Kalangala explained:

I met Evelyne for the first time in Gisenyi, Rwanda, where she was hidden in one of her late father’s friend’s house. I remember I received a call from one of my best friends, who knew that I was secretly helping Tutsi escape from Rwanda. He asked me if I can help his cousin’s wife who has

her niece in Gisenyi. He said that her life was threatened after the killing of her entire family. That niece was Evelyne. I went to Gisenyi and met with her Wednesday, May 11, 1994 at 10:45 a.m.; one month and a week after the beginning of the genocide. Friday May 13, 1994 around 11:00 p.m. Evelyne fled to Congo.¹³

By 1996, Rwandan Hutu militia forces



Colonel Francis Kalangala, Congo, 1998
Photol Courtesy of Francis Kalangala

(Interahamwe) who had fled Rwanda after the ascension of a Tutsi led government, had been using Hutu refugee camps in eastern Zaire as bases for attacks against Rwanda. These conflicts escalated into the First Congo War of 1996-1997, which led to the overthrow of President Mobuto and the seizure of

power in Zaire by Laurent Kabila. Francis Kalangala was then a Colonel.¹⁴ He was assigned by General Mahale Bakongo Lieko, FAZ chief of staff, to take charge of the armies defending Kinshasa. But resistance crumbled as Kabila's forces, with significant foreign assistance, moved swiftly on the capital. Mobutu flew out of the country on May 16. A white flag of surrender was raised at the innermost base of the Presidential Special Division (DSP) on May 18, and Kabila took control.¹⁵

Mr. Kalangala was immediately placed under arrest. However, rather than kill him or keep him captive, Mr. Kalangala explained, Kabila sought to exploit his popularity with his soldiers, and offered him an advisory position in the new army.¹⁶ James Kabarebe, a Rwandan, was Kabila's initial chief of staff, but was soon replaced by Celestin Kifwa. Mr. Kalangala was assigned to be Kifwa's military attache. But with the military and politics rife with intrigue and corruption, no one and no position was safe. As political fortunes ebbed and flowed, side-switching became very familiar.

In 1998, conflict between Kabila and Rwanda contributed to the outbreak of fighting now known as the Second Congo War. At that time, Mr. Kifwa informed Mr. Kalangala that his wife, Evelyn, was an enemy of the state because she was Rwandan Tutsi. As a high-ranking military official, he thus could not be married to her. He was ordered to divorce her. "You cannot have an enemy in your house," he was told.¹⁷

Mr. Kalangala refused. As he tells, his superiors were perplexed and suggested that he must be having "trouble" controlling his wife. They assured him that he needn't worry, for they could "take care of it."¹⁸ In August, 1998, he was told that if he wanted to maintain his position in the army, he must bring his wife to a detention center. He knew that killings were being carried out at that location. So he sent his wife and their young son to his brother's house in Moanda, and left for the countryside with their two daughters. He sought to feign his own death so that they would not go after her, but this effort was frustrated when his image appeared on television in September. Kalangala's brother sent Evelyne and their son to a church that was considered safe, but they were betrayed by the pastor and arrested in October 1998. Sent to Kinshasa, their fate uncertain, they remained in prison for 10 months. Meanwhile, Mr. Kalangala made his way out of Kinshasa, a process that took two days, and joined the *Rassemblement Congolais Pour La Democratie* (RCD) in Bas Congo.¹⁹

During this time, Mr. Kalangala explained, the government kept up a relentless propaganda stream of hate and fear against Rwandan Tutsis through radio and other media, encouraging the populace to "go outside and kill" Rwandan Tutsis.²⁰ At one point, a Kifwa assistant, one Maj. Myumba, told the Congolese to take revenge against Rwandans and "show the toads that never, and never ever again will they swallow the elephant."²¹ "Be ferocious. If you happen to encounter a Rwandan enemy . . . beat him to bruises [and] massacre them without

mercy . . . bring a machete, a spear, an arrow, a hoe, spades, rakes, nails, truncheons, electric irons, barbed wire, stones and the like, in order, dear listeners, to kill the Rwandan Tutsis . . . jump on the people with long noses . . . ”²²

Mr. Kalangala stated that Yerodia himself broadcast a list of 10 enemies, and Kalangala was first on the list. “He’s an enemy too,” Yerodia stated. “If you find him, kill him.”²³ According to Mr. Kalangala, his propaganda efforts were highly effective and “made the people into killers.”²⁴ Kalangala stated that a mob had entered his village of Nzalia and had attempted to find him. By the time they left, they had killed 58 villagers including some of his relatives.²⁵

Mr. Kalangala sought for a way to stop the propaganda in the late 1990s and to free his wife and young son who were being held in prison. He continued to conduct military operations with the RCD, while Azarias Ruberwa, a Congolese lawyer, led the political wing. In 1999, as the rebels met around a makeshift conference table, a Belgian lawyer briefed them regarding the possible usefulness of the new Belgian criminal law. Their idea was to get a Belgian court to investigate Abdoulaye Yerodia and to issue a warrant for his arrest.²⁶

Was it possible? Could Belgium, the former colonial power, now be made to serve the cause of justice in the Congo? The Congolese rebel group decided that a delegation would travel to Belgium and work there to initiate a prosecution of Yerodia and the issuance of an arrest war-

rant. Ruberwa made the first trip and things went well. The court was listening. In January, 2000, Mr. Kalangala went to Belgium to give testimony of the Kabila government’s demand that he divorce Evelyne, his refusal to do so and his consequent arrest and escape, and the impris-



Evelyne Kalangala with son Francis (one year-old) in Congolese Army jail, City of Matadi, October 1998

Photo Courtesy of Francis Kalangala

onment of his wife Evelyne and their son.²⁷

On April 11, 2000, the group achieved a significant step. The investigating judge handling the matter, Judge Damien Vandermeersch, concluded that there were “strong and sufficient grounds for initiat-

ing proceedings before the Belgian courts in respect of the matters complained of.”²⁸ Accordingly, the court issued an arrest warrant *in absentia* naming Yerodia in respect of certain acts alleged to have been committed in August 1998. The warrant was immediately transmitted to the International Criminal Police Organization (Interpol), and circulated internationally.²⁹ As the International Court of Justice (ICJ) later observed, the international circulation of the warrant could have resulted in Yerodia’s arrest while abroad.³⁰

In response, on October 17, 2000, the Kabila administration applied to the ICJ to annul the warrant. In January, 2001, Laurent Kabila was shot and killed by his bodyguard. His 29 year old son, Joseph Kabila, then a military commander, suc-

The rebel team’s efforts had fallen short, but according to Mr. Kalangala, they were not entirely unsuccessful: Yerodia stopped his incendiary broadcasts and withdrew into silence.

ceeded him as president and remains so today. Unexpectedly, the younger Kabila sent word to Mr. Kalangala that he would be welcome in the new administration.³¹ According to Mr. Kalangala, Kabila offered to restore his grade of Colonel, and Ruberwa, who would become a vice

president of the transitional government in 2003, also encouraged him to come.³² Mr. Kalangala weighed the offer. However, others warned him that Kabila’s offer was only a pretense to lure him to his death and he elected not to go. Instead, he received asylum in the United States, arriving in Newark, New Jersey, on September 10, 2001, where he was reunited with his family.³³

The legal fight in the ICJ continued on into 2002. Then, on February 14, 2002, the Court handed down its decision. Without addressing Belgium’s attempt at universal jurisdiction, which the Court found had not been properly raised by the Congo, the Court nevertheless struck down the warrant on the ground that Abdoulaye Yerodia, as the sitting Minister of Foreign Affairs, was immune from any such warrant issued by a national criminal court. In its decision, the Court attempted to instruct those seeking a remedy against Yerodia’s alleged criminal conduct as to possible alternative routes to justice, noting that “the *immunity* from jurisdiction enjoyed by incumbent Ministers for Foreign Affairs does not mean that they enjoy *impunity*.”³⁴ However, as Mr. Kalangala explains it, the suggestions given by the Court from its perch in the Hague were of little practical benefit to Mr. Kalangala and his compatriots.

First, the Court noted that “such persons enjoy no criminal immunity under international law in their own countries, and may thus be tried by those countries’ courts in accordance with the relevant rules of domestic law.”³⁵

While unquestionably true, the regime that appointed Yerodia minister of foreign affairs had no intention of prosecuting him for his actions, and Yerodia continued to wield great influence with the junior Kabila.

Secondly, the Court noted, “[such persons] will cease to enjoy immunity from foreign jurisdiction if the State which they represent or have represented decides to waive that immunity.”³⁶ Again, the Congolese regime had no intention of doing so.

Third, the Court observed, “after a person ceases to hold the office of Minister of Foreign Affairs, he or she will no longer enjoy all of the immunities accorded by international law in other States.”³⁷ However, the Congolese regime continued to provide Yerodia with official offices that kept his immunity intact.

Finally, the Court wrote, “an incumbent or former Minister for Foreign Affairs may be subject to criminal proceedings before certain international criminal courts, where they have jurisdiction.”³⁸ Examples of such international criminal courts include the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, and the International Criminal Court itself. However, to date, no such special tribunal with jurisdiction to prosecute crimes against humanity committed in the Congo exists, and the International Criminal Court only has jurisdiction to prosecute crimes committed since the entry into force of the Rome Statute on July 1, 2002.³⁹

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Indirectly, the efforts bore fruit in another way. While in Europe pursuing the warrant, Francis Kalangala requested help from the International Red Cross, the United Nations, and the United States in securing his wife Evelyne’s release. With help from the Red Cross and the U.S. Embassy in the Congo, she and their young son were freed and granted asylum in the U.S. in March, 2000, although Mr. Kalangala, already back in the field, had no way of knowing this. It was only when Evelyne had passed through Benin on her way to America that she managed to get in touch with her husband through the satellite phone he carried. She was granted refugee status in the United States and settled in Bridgeport, Connecticut.

Upon learning that his wife and son were safe, Mr. Kalangala squarely faced his own tenuous uncertainties in the Congo. In the silence of the jungle night, with his wife and son far away, and his daughters, ages 11 and 14, close at hand but still at risk, he made the decision to leave the Congo. Thus he took the steps that eventually brought his entire family to Connecticut and to that summer day of August, 2009.

As a man with a unique quest for justice, Francis Kalangala’s life is far from ordinary. He even returned to the Congo

from October to December, 2005, and met with President Joseph Kabila, the man whose troops he fought against and whom he believes tried to lure him to his death with the offer of a high government position.⁴¹ Reflecting on the trip, in 2006, Kalangala told the Connecticut Post, “Joseph Kabila is young and he has a good heart, even if he has bad people



Francis and Evelyn Kalangala, Bridgeport, CT
Photo | Courtesy of Francis Kalangala

around him. [But] they really are a gang. I worry that no matter who you elect, nothing really changes.”⁴²

However, in many respects, Francis Kalangala is now just another immigrant to the United States – working as a computer engineer and pursuing an advanced degree while working to improve his life, and that of his family.

Postscript

The author of this article attended a United Nations Day program in Norwalk, Connecticut on October 21, 2009. Mr. Kalangala and his wife were the featured speakers on the topic: “The Human Face

of War and Peace in DR Congo.” That evening Evelyne Kalangala explained that her mother, a Tutsi, had been killed for her ethnicity in the genocide in Rwanda. Her father, a Hutu, was killed for marrying a Tutsi. And she, even after escaping to the Congo, found herself imprisoned. “You can’t imagine an African prison,” she said. “You can’t eat. You don’t shower. You don’t sleep well.”

“I miss my family,” she concluded. “But if I teach my son to hate, it will never stop.” Like some other survivors of the wars of the region, Evelyne explained that she had decided to forgive the perpetrators of the crimes that had destroyed her family because “forgiveness has power.” Turning to the United Nations’ representative present that evening, she pointedly observed, “Please tell the U.N, if you don’t introduce the power of forgiveness, you can’t stop what is happening in the Congo.”⁴³

Endnotes

1. Author's Interview Notes, Feb. 2, 2011.
2. *Id.*
3. Our text was *International Business Law and Its Environment*, Seventh Edition, by Schaffer, Agusti, and Earle.
4. *Case Concerning the Arrest Warrant of 11 April 2000* (Democratic Republic of the Congo v. Belgium), I.C.J. Rep. 3, International Court of Justice (Judgment of 14 Feb. 2002) (the "Congo Decision").
5. *See* Belgian Act of 16 June 1993 Concerning the Punishment of Grave Breaches of the Geneva Conventions of 12 August 1949 and their Additional Protocols I and II of 18 June 1977, as modified by the Act of 10 February 1999 Concerning the Punishment of Grave Breaches of International Humanitarian law (Unofficial consolidated English text, and commentary, published in 38 I.L.M. 918 (1999).
6. Fourth Geneva Convention, Article 147.
7. The statute was repealed in 2003. Opponents of the statute argued that cases brought under the law could be handled better by the International Criminal Court under the nearly identical Rome Statute for the prosecution of international war crimes and crimes against humanity. Even after the law's repeal, however, Belgian courts are still able to prosecute crimes committed in foreign countries where Belgians are involved and crimes specifically related to the Rwandan genocide.
8. Christina Fisanick, ed., *The Rwanda Genocide* at 9, Greenhaven Press, 2004.
9. William G. Thom, *Congo-Zaire's 1996-97 Civil War in the Context of Evolving Patterns of Military Conflict in Africa in the Era of Independence*, *Journal of Conflict Studies*, University of New Brunswick, Vol. XIX, No. 2, Fall 1999.
10. *The Rwanda Genocide* at 8.
11. Author's Interview Notes, Feb. 2, 2011
12. *Id.*
13. Email communication to author, Oct. 13, 2009.
14. Author's Interview Notes, Feb. 2, 2011
15. *See* Thom.
16. Author's Interview Notes, Feb. 2, 2011.
17. *Id.*
18. *Id.*
19. *Id.*

20. *Id.*
21. Hate Messages on East Congolese Radio, BBD World Mediawatch, August 12, 1998.
22. *Id.*
23. Author's Interview Notes, Feb. 2, 2011.
24. *Id.*
25. *Id.*
26. *Id.*
27. *Id.*
28. Congo Decision, CounterMemorial of Kingdom of Belgium, 25 September 2011, at 10.
29. Congo Decision, Judgment at 9.
30. *Id.* at 30.
31. Author's Interview Notes, Feb. 2 and Feb. 6, 2011.
32. *Id.*
33. *Id.*
34. Congo Decision, Judgment at 25-26. (emphasis in original)
35. *Id.*
36. *Id.*
37. *Id.*
38. *Id.*
39. In fact, the first investigation opened by the Chief Prosecutor of the International Criminal Court was an investigation of crimes in the DRC opened in June 2004. However, the investigation is expressly limited to crimes committed after July 1, 2002, and thus excludes the conduct by Yerodia that Francis Kalangala and his compatriots complained about.
40. Author's Interview Notes, Feb. 2, 2011.
41. Author's Interview Notes, Feb. 2 and Feb. 6, 2011.
42. Bill Cummings, Fugitives From Congo Strife Building New Lives In Area, Connecticut Post, August 15, 2006.
43. Author's Notes of Oct. 21, 2009 Program.